

**KENTUCKY PERSONNEL BOARD  
MINUTES OF OCTOBER 11, 2019**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Crall on October 11, 2019, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Brian J. Crall, Chair  
Mark O. Haines, Vice Chair  
Beverly H. Griffith, Member  
William J. Byrley, Member  
Catherine J. Monteiro, Member  
Richard Waite, Elected Member  
Tanya Lawrence, Elected Member  
Mark A. Sipek, Executive Director and Secretary  
Stafford Easterling, General Counsel  
Cynthia Perkins, Administrative Section Supervisor  
Gwen McDonald, Administrative Specialist

2. **PERSONNEL BOARD COMPOSITION**

--Franklin Circuit Court Order from Judge Wingate  
--Kentucky Retirement's Response  
--Memorandum from Mark A. Sipek

Chair Crall asked the Board's preference of discussing this matter in open or closed session. With no members objecting, Chair Crall stated the matter would be taken up in open session.

Mr. Sipek announced that Rich Waite's request to continue as a Board member after his retirement was upheld by Franklin Circuit Court Judge Thomas Wingate. The Kentucky Retirement Systems also confirmed its approval for Mr. Waite to continue as a Board member. Mr. Sipek requested guidance from the Board regarding Judge Wingate's decision, i.e. did the Board wish to appeal the decision and, if so, should a request for a stay be made to the Court?

Ms. Griffith stated she did not disagree with the ruling, but felt that a change to the statute should be considered, since the current language was not clear on this matter. The Board members discussed this and were in favor of updating the statute.

Chair Crall requested that Personnel Cabinet Secretary Tom Stephens discuss the Cabinet's position on the ruling. Secretary Stephens felt that since the two positions were filled by employees elected by their peers, then having the position filled by a retiree leaves a gap. Chair Crall questioned the ruling that Mr. Waite's pay is considered a stipend and what does that mean. Secretary Stephens agreed that the ruling could create problems for retirees and how their status is viewed by the federal government.

Chair Crall stated he felt the matter should not continue further in the court system, but it should be decided in the future with the legislature, perhaps in a joint proposal with the Personnel Cabinet to revise the statute in accordance with legislative intent. He confirmed that the Board would follow the ruling and allow Mr. Waite to continue as a member and that the statute would be further reviewed, perhaps jointly with the Personnel Cabinet, to make the language more clear.

**3. READING OF THE MINUTES OF THE REGULAR MEETING HELD SEPTEMBER 13, 2019.**

The minutes of the last Board meeting had been previously circulated among the members. Chair Crall asked for any additions or corrections. Ms. Monteiro moved to approve the minutes as submitted. Ms. Lawrence seconded and the motion carried 6-0. The Board members signed the minutes.

(Chair Crall does not vote, unless noted.)

**4. EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek stated he had attended the Conference on Leadership and Diversity. He felt it was an excellent conference and personally enjoyed the presentation by the Administrative Office of the Courts.

Along that line, Mr. Sipek stated he would be presenting at the HR Symposium held at the Personnel Cabinet. He felt it was a good opportunity to share what the Personnel Board does and answer questions from HR professionals from different agencies.

Mr. Sipek mentioned he had attended a Kentucky Association of Administrative Adjudicators (KAAA) luncheon on October 10, 2019. The presentation was on the Perry Puckett appeal. The Hon. Jennifer Wolsing presented on behalf of the Cabinet for Health and Family Services. The Hon. David Lightty was scheduled to present on behalf of the Appellant, but did not attend. Ms. Wolsing conducted an excellent presentation of the matter, which is currently on review before the Supreme Court.

Lastly, Mr. Sipek mentioned the Attorney General's Hearing Officer Training will be held October 25, 2019, and that he and several Board members would be attending.

**5. REPORT OF THE PERSONNEL CABINET**

Secretary Tom Stephens and Department of Employee Insurance Commissioner Jenny Goins presented to the Board regarding changes to the open enrollment process. Secretary Stephens discussed the benefit of providing a self-funded plan to employees of the Commonwealth.

A new wellness provider, Staywell, will replace Go365 at the beginning of the year. Staywell focuses on total "well being" rather than an exercise/activity wellness aspect. As the Go365 is ending, employees are being reminded to spend their Go365 "bucks" by November 30, 2019.

Commissioner Goins showed a PowerPoint presentation regarding the updates to the healthcare and benefits provided to state employees during the 2020 year. She answered questions from the Board regarding open enrollment and employee benefits.

**6. ORAL ARGUMENTS**

None were presented.

**7. REVIEW OF INTERIM ORDER – ORAL ARGUMENT**

- A. ~~Stephen Knipper v. Governor's Office (Appeal No. 2019-037)~~  
~~--Appellee's Response to July 3, 2019 Interim Order~~  
~~--Appellant's Response to July 3, 2019 Interim Order~~  
~~--Appellee's Reply to Appellant's Response~~  
~~--Appellant's Reply to Appellee's Response~~  
~~--Lt. Governor's Office, Entry of Appearance and Provisional Petition~~  
~~--for Intervention and Motion for Continuance~~  
~~--Memorandum in Further Support of the Lieutenant Governor's Office~~  
~~--Provisional Petition to Intervene and Motion for Continuance~~  
~~--Lt. Governor's Office Supplemental Memorandum~~  
~~--Appellee's Response to Lt. Governor's Provisional Petition to Intervene and~~  
~~--Motion for Continuance~~  
~~--Lt. Governor's Office Response to July 3, 2019 Interim Order~~  
~~--Appellant's Reply to Lt. Governor's Response to July 3, 2019 Interim Order~~  
**Deferred to September Board**  
**Continued Generally**

**8. CLOSED SESSION/RETURN TO OPEN SESSION**

Ms. Monteiro moved that the Board go into Executive Session for the purposes of discussing complaints and deliberations regarding individual adjudications. Mr. Waite seconded. Chair Crall stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(j), the Kentucky Open Meetings Act, the Board retired into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action were as follows, because there were deliberations regarding individual adjudications as listed on the Board's Agenda for the October 11, 2019 meeting.] (10:25 a.m.)

Ms. Lawrence moved to return to open session. Mr. Waite seconded and the motion passed by acclamation. (11:47 a.m.)

**9. CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

**A. Rhonda L. Kiper v. Labor Cabinet (2018-005)**

Ms. Griffith, having considered the record, including Appellants' exceptions, Appellee's exceptions and request for oral argument, Appellees' response to Appellant's exceptions, Appellant's response to Appellee's exceptions, and oral arguments, moved to remand this matter to the Hearing Officer to address the issue of whether the Board has jurisdiction over the issue of did the person who dismissed the Appellant have appointing authority if the Board determines the discrimination issue against the Appellant, citing KRS 18A.095(9). Mr. Waite seconded and the motion carried 6-0.

**B. Amanda Parmley v. Transportation Cabinet (2017-234)**

Ms. Griffith, having considered the record, including Appellant's exceptions, moved to reject the Hearing Officer's Recommended Order and remand this matter to the Hearing Officer for further proceedings. Ms. Monteiro seconded and the motion carried 6-0.

**C. Bryan Creech v. Cabinet for Health and Family Services (2019-058)**

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Mr. Haines seconded and the motion carried 6-0.

**D. Ricky Eastham v. Public Protection Cabinet (2018-113)**

Ms. Monteiro having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 5-0. Ms. Griffith abstained.

**E. William Grayson v. Tourism, Arts & Heritage Cabinet/F&W (2018-160)**

Ms. Griffith, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 5-0. Mr. Waite abstained.

**F. Thomas Klatt v. Justice and Public Safety Cabinet/Corrections and  
Personnel Cabinet (2017-210 and 2017-240)**

Ms. Monteiro, having considered the record, moved to accept the recommended order dismissing the appeal. Mr. Waite seconded and the motion carried 5-0. Ms. Lawrence abstained.

**G. Michael Middleton v. Transportation Cabinet (2019-003)**

Ms. Griffith, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 6-0.

**H. Mark Jones v. Energy and Environment Cabinet (2018-120)**

Ms. Griffith, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 6-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

**I. Stephen Mullins v. Justice and Public Safety Cabinet/Corrections and Personnel Cabinet (2019-140)**

**J. Emma Taylor v. Cabinet for Health and Family Services (2018-230)**

Ms. Monteiro moved to accept the recommended orders and to dismiss the appeals for failure to prosecute the appeals. Mr. Waite seconded and the motion carried 6-0.

**10. WITHDRAWALS**

Mr. Waite moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Mr. Byrley seconded and the motion carried 6-0, with Ms. Lawrence abstaining from Items "D and H."

- A. Shannon Anson v. Justice and Public Safety Cabinet/Juvenile Justice (2016-257)
- B. Christopher Findlay v. Tourism, Arts & Heritage Cabinet/F&W (2019-079)
- C. Mark R. Freudenburg v. Education & Workforce Dev. Cabinet (2018-125)
- D. Jessica Grubbs v. Finance and Administration Cabinet & Personnel Cabinet (2019-173)
- E. Matthew LaPierre v. Department of Veterans Affairs (2019-154)
- F. Natalia Moore v. Department of Veterans Affairs (2019-179)
- G. Brian O'Neil v. Department of Veterans Affairs (2019-182)
- H. Clarissa Goode v. Personnel Cabinet (2019-203)
- I. Rhonda Smith v. Justice and Public Safety Cabinet/Corrections (2019-171)

## 11. SETTLEMENTS

Ms. Griffith moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Ms. Monteiro seconded and the motion carried 6-0, with Ms. Lawrence abstaining from Items “E and H.”

- A. Stephanie Allen v. Justice and Public Safety Cabinet/Corrections (2018-247)
- B. Melinda Bourne v. Cabinet for Health and Family Services (2019-133)
- C. Michaela Chinn v. Cabinet for Health and Family Services (2019-039) (Mediation)
- D. Rodney Hall v. Energy and Environment Cabinet (2018-258)
- E. Harvey Kuhl v. Transportation Cabinet and Personnel Cabinet (2015-151)
- F. Mark Shepherd v. Energy and Environment Cabinet (2018-244)
- G. Emily Sams v. Cabinet for Health and Family Services (2019-118) (Mediation)
- H. Jill Goycochea v. Cabinet for Health and Family Services and Personnel Cabinet (2019-029) (Mediation)
- I. James Newton v. Finance and Administration Cabinet (2019-137) (Mediation)

## 12. OTHER

- A. Discussion of Personnel Cabinet’s Questions  
--KRS 18A.0551 – Personnel Board elections – Procedures


Mr. Sipek reviewed the answers to the Personnel Cabinet’s questions with the Board. The Board reviewed Mr. Sipek’s draft of the answers. Mr. Sipek stated that changes to the election protocol would need to be addressed by the legislature and perhaps that would be a good time to address the Board member retirement/loss of employment issue also. Chair Crall opined that Mr. Sipek should discuss some of the questions with Secretary Stephens to make certain exactly what the Cabinet was asking.

Once the answers have been finalized, they will be sent to the Cabinet and also be posted to the Board’s website.

- B. Discussion of Personnel Board Calendar for 2020


The Board approved the dates for the 2020 monthly meetings: January 10, February 10, March 13, April 17, May 15, June 12, July 10, August 14, September 25, October 19, November 13, and December 11, 2020.

There being no further business, Mr. Haines moved to adjourn the meeting. Ms. Monteiro seconded and the motion passed by acclamation. (12:34 p.m.)

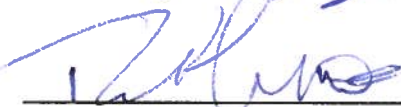
  
\_\_\_\_\_  
Brian J. Crall, Chair

  
\_\_\_\_\_  
Mark O. Haines, Vice Chair

\_\_\_\_\_  
Beverly Griffith, Member

  
\_\_\_\_\_  
William J. Byrley, Member

  
\_\_\_\_\_  
Catherine J. Monteiro, Member

  
\_\_\_\_\_  
Rich Waite, Member

  
\_\_\_\_\_  
Tanya Lawrence, Member